

**EXHIBIT B TO THE JUNE 26, 2008
DECLARATION OF GREGORY I. RASIN, ESQ.**

ORIGINAL

1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
JANNIE PILGRIM, GIOVANNA HENSON,
JESAN SPENCER and BRENDA CURTIS,

Plaintiffs,

'07 CIV

-against-

6618

THE MCGRAW-HILL COMPANIES, INC.,

Defendant.
-----x

January 3, 2008

9:31 a.m.

Deposition of JESAN SPENCER, held at
the offices of Proskauer Rose LLP, 1585
Broadway, New York, New York, pursuant to
Notice, before Mildred Cassese, a Registered
Professional Reporter and Notary Public of
the State of New York.

Computer Reporting Incorporated **CRI**

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1 *J. Spencer*

2 Q. Do you know her in any context other
3 than through your employment at McGraw-Hill?

4 A. Only through employment at
5 McGraw-Hill.

6 Q. Do you know Giovanna Henson?

7 A. Yes, I do.

8 Q. How do you know her?

9 A. Only through employment at
10 McGraw-Hill.

11 Q. Do you know Brenda Curtis?

12 A. Only through employment at
13 McGraw-Hill.

14 Q. Have you had any conversation with
15 Ms. Pilgrim, Ms. Henson or Ms. Curtis about your
16 deposition today during which your attorneys did
17 not participate?

18 A. No, I haven't.

19 Q. You were first employed by McGraw-Hill
20 in December of 2000; is that correct?

21 A. Correct.

22 Q. And you worked for McGraw-Hill until
23 February of 2007?

24 A. Correct.

25 Q. During the time that you were working

1 *J. Spencer*

2 for McGraw-Hill, was Ariella Spencer living with
3 you?

4 A. Yes.

5 Q. The entire time?

6 A. Yes.

7 Q. During the time that you worked for
8 McGraw-Hill, was Daniel Simmons living with you?

9 A. Yes.

10 Q. Was he living with you the entire
11 time?

12 A. Yes.

13 Q. Are you currently working?

14 A. No, I'm not working.

15 Q. Have you held any job since February
16 of 2007?

17 A. Currently I have my own business.

18 Q. What's the name of that business?

19 A. Spencer Healthy Life.

20 Q. What kind of a business is that?

21 A. Health food.

22 Q. When you say that is a health food
23 business, can you explain to me specifically what
24 the business does?

25 A. Counsels clients who come in who want

1 *J. Spencer*

2 different than from what Maxine and Esme do?

3 A. He makes calls to confirm whether
4 clients are coming in to be spoken with.

5 Q. How many days a week does Yvonne work?

6 A. She works one day a week.

7 Q. Other than the salary that you draw
8 from Spencer Healthy Life, have you obtained any
9 other money, whether it be profits or any other
10 form of compensation?

11 A. No.

12 Q. Is Spencer Healthy Life registered
13 anywhere?

14 A. I have a business certificate for it.

15 Q. And the business certificate is issued
16 under the name of Spencer Healthy Life?

17 A. Yes.

18 Q. And it's registered in New York?

19 A. Yes, it is.

20 Q. I want to shift gears a little bit and
21 talk about your application for employment with
22 McGraw-Hill.

23 How did you learn that there was a
24 position available at McGraw-Hill?

25 A. A friend of mine called me, informed

1 *J. Spencer*

2 strategies maybe they might have been working on.

3 Q. When you say what strategies, what are
4 you talking about?

5 A. What are they trying to implement to
6 grow the business, to grow the -- grow their
7 readership.

8 Q. So not human resource strategies; more
9 business strategies?

10 A. More business strategies.

11 Q. Did you obtain an offer after your
12 meeting with the people that you just described?

13 A. I did receive an offer.

14 Q. Who did the offer come from?

15 A. Mr. Harper.

16 Q. What position were you offered?

17 A. Senior human resource manager
18 supporting information and media services.

19 Q. What was the compensation that you
20 were offered?

21 A. I believe \$85,000 a year.

22 Q. And to whom were you to report in your
23 senior human resources manager position?

24 A. Direct report to Mr. Harper.

25 Q. Did you accept that offer?

1 *J. Spencer*

2 Q. Does that sounds about right?

3 A. I don't recall.

4 Q. It is true, though, that the job at
5 McGraw-Hill offered you a higher annual salary
6 than the position at Coopers & Lybrand?

7 A. Yes, it offered me more.

8 Q. When you were extended the offer --
9 strike that.

10 Are you familiar with the term "grade
11 level"?

12 A. Yes, I am.

13 Q. And are you familiar with the term
14 "grade level" within the context of McGraw-Hill?

15 A. Yes.

16 Q. When you got the job offer at
17 McGraw-Hill, was the job that you were offered
18 assigned a particular grade level?

19 A. Yes, it was.

20 Q. What was that grade level?

21 A. Level 19.

22 MS. BLOOM: I ask if you can mark that
23 and I'd like to mark it Spencer Exhibit 1.

24 (Spencer Exhibit 1, Offer letter dated
25 November 6, 2000, marked for identification,

1 *J. Spencer*

2 McGraw-Hill in December of 2000, you said you were
3 reporting directly to Mr. Harper; is that correct?

4 A. That is correct.

5 Q. What were your duties and
6 responsibilities?

7 A. My overall duties and responsibilities
8 while reporting to Mr. Harper was to partner with
9 the department heads, to determine in what way
10 they needed HR assistance, develop competency
11 based questions, entry level employees, interns,
12 managers and directors.

13 Oversee, manage and coordinate all
14 aspects of the intern program.

15 Develop a diversity slate.

16 Complete the competency based
17 questionnaire.

18 Handle all -- handle and resolve all
19 employee relations issues to make sure that no
20 issue led to any litigation.

21 Conduct training on an as-needed
22 basis.

23 Develop and manage the sexual
24 harassment training.

25 Partner or meet with the business

1 *J. Spencer*

2 department heads by sitting in on their meetings
3 to understand their role and their
4 responsibilities.

5 Recruit for the administrative
6 assistant position for the president of Business
7 Week.

8 Handle all employee relations issues
9 with the health care group.

10 Disseminate information on an
11 as-needed basis to all businesses that were
12 supported.

13 Meet with employees to address
14 one-on-one benefit issues, concerns.

15 Review the numbers of individuals in
16 each of the departments based upon data sent by
17 the group that works on affirmative action.

18 Initiate and develop a leadership
19 development program for department heads.

20 Attend department head meetings headed
21 up by the president to provide updates on HR's
22 accomplishments for the business.

23 Communicate results of surveys as they
24 were conducted.

25 That's as much as I can remember, that

1 *J. Spencer*

2 I can recall to present.

3 Q. When you worked under Mr. Harper's
4 supervision, did you do each of the things that
5 you just outlined for us?

6 A. Yes, I did.

7 Q. Were you familiar with the personnel
8 policies of McGraw-Hill?

9 A. When I came on board he explained to
10 me where the policies were and asked me to become
11 familiar with the policies.

12 Q. And did you do that?

13 A. Yes, over a period of time.

14 Q. In order to be effective in a human
15 resource or a senior human resource position, it
16 is necessary to be familiar with the personnel
17 policies of the company, correct?

18 A. It's correct.

19 Q. Now, when -- you said that you would
20 handle and resolve all employee relations issues
21 to make sure no issue led to any litigation.

22 Did you interface with in-house legal
23 counsel?

24 A. When needed.

25 Q. You interfaced or communicated with

1 *J. Spencer*

2 A. In other words, if a person is absent,
3 for example, if a person is absent, how many days
4 do you provide for them before you put them on
5 disability, things like that.

6 Q. You reported to Mr. Harper until
7 February of 2005; is that right?

8 A. Approximately February 2005.

9 Q. And during the time that you reported
10 to Mr. Harper, you received salary increases; is
11 that correct?

12 A. That's correct, I did.

13 Q. Do you remember how many?

14 A. Well, let me put it to you this way, I
15 don't recall a time when I worked with him that I
16 didn't receive a salary increase.

17 Q. Did you like working for Mr. Harper?

18 A. Did I like working for Mr. Harper? I
19 liked my job.

20 Q. Did you think that he was a fair
21 supervisor?

22 A. At times.

23 Q. Well, were there times when you didn't
24 think he was fair?

25 A. Yes.

1 *J. Spencer*

2 A. I'm claiming I was treated differently
3 from white males and white females.

4 Q. Are you claiming that you were treated
5 differently from black males?

6 A. I didn't see my boss's interaction
7 with black males. I notice his interaction with
8 blacks as a whole.

9 Q. When you refer to your boss, who are
10 you referring to?

11 A. I'm referring to Ken Caruso, because
12 he is the reason I'm here.

13 Q. When you say he is the reason I'm
14 here, he is the person that you're claiming
15 discriminated against you?

16 A. Yes.

17 Q. You're not claiming that Mr. Harper
18 discriminated against you; is that right?

19 A. This case is not regarding Mr. Harper.

20 Q. So you're not claiming that Mr. Harper
21 discriminated against you; is that right?

22 A. Regarding my color and my sexuality,
23 no.

24 Q. Well, are you claiming that Mr. Harper
25 discriminated against you in any way other than

1 *J. Spencer*

2 with regard to your color or sexuality?

3 A. Mr. Harper treated me differently in
4 terms of some assignments that he would give me,
5 one of which I've already mentioned.

6 Q. Are you claiming that he treated you
7 differently -- strike that.

8 But you're not claiming that he
9 treated you differently because of your sex or
10 your color, correct?

11 A. No, I'm not claiming that with regard
12 to Mr. Bill Harper.

13 Q. Now, if you can look at Exhibit 5,
14 please, your answers to interrogatories, and I'd
15 like to direct your attention specifically to
16 interrogatory No. 12, and your answer to that
17 interrogatory, interrogatory No. 12 asks you to
18 identify each and every individual who allegedly
19 discriminated against you on the basis of your
20 race or color and who allegedly retaliated against
21 you.

22 Do you see that question?

23 A. Yes.

24 Q. And in response to that question you
25 provided three names: Ken Caruso, Sheila O'Neil

1 *J. Spencer*

2 and Brett Marschke; is that right?

3 A. Yes, as listed here.

4 Q. Are you claiming that there's anybody
5 else who discriminated against you on the basis of
6 your race, your color or your sexuality, other
7 than the three people whose names appear here?

8 A. Only the three people whose names
9 appear.

10 Q. Are you claiming that anybody else
11 retaliated against you other than the three people
12 whose names appear here?

13 A. Only the three people that I see here.

14 MS. BLOOM: The videographer needs to
15 change his tape, so we'll take a break.

16 (There was a pause in the proceedings.)

17 THE VIDEOGRAPHER: Returning to the
18 record at 11 o'clock from 10:59 at the
19 beginning of tape 2.

20 Q. Now, Ms. Spencer, you reported to
21 Mr. Harper until February of 2005 and then your
22 reporting relationship changed; is that right?

23 A. That's correct, it did change.

24 Q. At that time in February of 2005 you
25 began reporting to Ken Caruso; is that correct?

1 *J. Spencer*

2 A. I reported to Ken Caruso.

3 Q. At some point in time you stopped
4 reporting to Mr. Caruso and started reporting to
5 Mr. Harper again; is that correct?

6 A. Yes.

7 Q. And when was that?

8 A. Approximately May of 2000 -- between
9 May and June of 2006.

10 Q. And you continued to report to
11 Mr. Harper until your employment with McGraw-Hill
12 ended; is that right?

13 A. Correction. When I -- there's a
14 correction. I have to go back. I didn't report
15 to Mr. Harper. I reported to Toi Eaton, not
16 Mr. Harper.

17 Q. Did you have any reporting
18 relationship to Mr. Harper?

19 A. No, I did not.

20 Q. And you're not claiming that Toi Eaton
21 discriminated or retaliated against you; isn't
22 that right?

23 A. I'm not claiming that.

24 Q. Prior to the time that your reporting
25 relationship changed in 2005 from your reporting

1 *J. Spencer*

2 claiming in this case that you had been
3 discriminated against because you are a black
4 woman; is that right?

5 A. That's what I stated.

6 Q. Can you tell me in as much detail as
7 possible all the ways in which you believe you
8 were discriminated against at McGraw-Hill because
9 you are a black female?

10 A. Well, it began when Ken Caruso came on
11 board, and within a couple of months time when he
12 would speak to me in his office he would call me
13 in and refer to women as bitches. He'd say shit
14 and fuck to me at every conversation that he had.

15 Then when I would express to him about
16 other concern, I'd share information about other
17 minority -- other blacks being concerned about how
18 they were treated, he would tell me they should
19 leave.

20 He spoke to me in a very demeaning
21 way. He shooed me out like -- like I was some
22 kind of dog.

23 Then when I complained about him, he
24 began to retaliate against me.

25 He raised his voice.

1 *J. Spencer*

2 He pointed his finger in my face.

3 He shooed me out.

4 He practically told me to get out at
5 times. When he had a phone call, he told me to
6 just leave.

7 And I made note that he didn't treat
8 any white male or any white female like he treated
9 me, and that was confirmed.

10 Sheila Mitchell also complained about
11 his behavior.

12 Pat France complained, who was the
13 only black department head, that when he came on
14 board that he never -- he went to see all the
15 white males and white female department heads but
16 never saw her.

17 And then when I told him that blacks
18 were concerned, minorities were concerned about
19 how we were treated, he said they should leave,
20 and at that juncture I knew he meant me.

21 He never spoke to me in the morning.

22 And his behavior every time was
23 punitive, punishment.

24 He treated me like I was a worthless
25 person. I might as well have been a dog or a

1 *J. Spencer*

2 slave. I have never been treated like that at
3 McGraw-Hill by anyone.

4 And being in HR I knew that behavior
5 wasn't normal for an HR person like me reporting
6 to someone.

7 Q. Are there any other ways in which you
8 claim that he discriminated against you?

9 A. He reduced my responsibilities to
10 nothing.

11 He gave me clerical responsibilities.

12 He took away my visibility with my
13 business partners.

14 He told -- he told -- one of the
15 managers told me when I said to her, I don't get
16 to talk to you, I don't get to see you, she says
17 Ken Caruso told her not to come -- told the
18 managers, not the department heads, not to come to
19 me, to go directly to him.

20 I had no job. He took my job away.
21 He had me ordering boxes for people who were rich.

22 He had me going into Lawson and
23 looking up salaries for people, and he had Lawson.

24 He asked me to escort a tenured
25 employee to the Social Security office to find out

1 *J. Spencer*

2 if we could fix his Social Security adjustments
3 because an error was made way before I came into
4 the company.

5 I might as well have been the nanny.

6 Q. When you say one of the managers told
7 you that Ken Caruso had told them not to go to you
8 but to go to him, who was that manager?

9 A. Sheila DiBiase.

10 Q. Are there any other ways in which you
11 claim Mr. Caruso discriminated against you?

12 A. He took away everything that I had in
13 terms of a job. I was at McGraw-Hill for seven
14 years, for seven years. I worked hard to get
15 there.

16 I had a Master's. I networked. By
17 the time he finished, nobody knew who I was.

18 I sat at a desk every day with little
19 work to do. My managers didn't know I existed,
20 and then he talked about I didn't do my job, I
21 didn't do my work.

22 He took the work away. I couldn't have
23 work. I was nonexistent at McGraw-Hill. Seven
24 years, down the drain. Nothing. I loved my job.
25 I loved -- literally loved my job.

1 *J. Spencer*

2 Q. Are there any other ways --

3 **THE WITNESS:** I got to take a break.

4 **MS. BLOOM:** I'd like her -- I'm sorry,
5 I'd just like her to finish the answer.

6 Q. Are there any other ways in which you
7 claim that Mr. Caruso discriminated against you?

8 A. That is discrimination, alienation,
9 taking everything you have, all your credentials
10 away, that is discrimination.

11 Q. Are there any other ways in which you
12 claim he discriminated against you?

13 A. That's all I can think of for now.

14 Q. Is there anything that would refresh
15 your recollection?

16 A. I can't think of anything for now.

17 **MR. SOLOTOFF:** We'd like to take that
18 break.

19 Q. Have you finished your answer?

20 **MR. SOLOTOFF:** She has.

21 **MS. BLOOM:** I just want to make
22 sure --

23 **MR. SOLOTOFF:** She has. Counsel,
24 you're abusing her now.

25 **MS. BLOOM:** No, I'm not.

1 *J. Spencer*

2 A. Mr. Caruso took all my work-related
3 assets and diminished them to the point where I
4 would be considered a non, barely functioning HR
5 coordinator.

6 He reduced me from a senior HR manager
7 of Business Week to someone who was just about a
8 clerical, and considered it such.

9 My reputation was lost.

10 Q. During the time that you reported to
11 Mr. Caruso, did your grade level change at all?

12 A. No. My grade level didn't change.

13 Q. Did your title change at all?

14 A. My title didn't change.

15 Q. And in terms of your compensation,
16 your compensation increased during the period that
17 you reported to Mr. Caruso; isn't that correct?

18 A. I'm going to say under Mr. Caruso I
19 don't recall him ever having responsibility for
20 giving me an increase. I don't recall it.

21 Q. Do you recall receiving an increase
22 during the period of time that you reported to Mr.
23 Caruso?

24 A. I recall him being there in 2005, and
25 from previous work past that my increase would

1 *J. Spencer*

2 have been given to me round about the time he was
3 there, but I believe that increase came from
4 Mr. Harper.

5 Q. And so it's your testimony that you
6 got an increase in the year 2005 but you don't
7 attribute that increase to Mr. Caruso?

8 A. I don't recall that. I don't remember
9 Mr. Caruso ever sitting me down and saying to me
10 Jesan Spencer, this is the increase I allotted to
11 you. I just don't recall that.

12 Q. But you do remember you got an
13 increase for the year 2005?

14 A. I do remember I got an increase for
15 the year 2005.

16 Q. And you got an increase for the year
17 2006?

18 A. I guess I did. I don't really recall.

19 Q. When you talked about PMP earlier
20 today, you were talking about the performance
21 reviews that employees would get?

22 A. Performance management process.
23 That's process in which they use to evaluate you.

24 Q. And it would result in actual
25 performance -- a written performance evaluation;

1 *J. Spencer*

2 isn't that right?

3 A. It would be a written -- yes, you
4 would get a performance evaluation in writing.

5 Q. And you did get a performance
6 evaluation in writing from Mr. Caruso in 2005;
7 isn't that correct?

8 A. I received a performance evaluation
9 from him.

10 Q. Do you remember what the overall
11 rating was on that review?

12 A. Target.

13 Q. And that was the same overall rating
14 that you had gotten the previous year from
15 Mr. Harper, correct?

16 A. Target rating for Mr. Harper as well.

17 Q. The previous year?

18 A. Correct.

19 Q. You said before the break that
20 Mr. Caruso had retaliated against you.

21 What did you mean by your statement
22 that he retaliated against you?

23 A. Well, once I complained about his
24 attitude towards me, that's when I noticed that I
25 wasn't meeting with the department heads. I had

1 *J. Spencer*

2 very little projects, if any, to do.

3 My phone barely rang. I got no calls,
4 little or no calls from any department heads.

5 And that's when he started giving me
6 more clerical work. That's when he would make --
7 tell the department heads a certain date or
8 certain deadline for information, and then I would
9 know that the dates or the deadlines had changed
10 and I would be considered late, if I had to get
11 information.

12 If he wanted them, for example, to
13 give them ratings pre-PMP ratings for his people
14 before final ratings were in place, he would have
15 me get on the phone and call them to remind them
16 to send them in. Sometimes he asked me to do that
17 two or three times a day. A generalist doesn't
18 call a department head two or three times during
19 the course of the day.

20 When he needed to get some documents
21 I'd say okay, you know, I need the document, you
22 have to have the document to Ken by such and such
23 a date, such and such a time, and they would say
24 that's not what Ken told me. He wouldn't share
25 the information. He kept information to himself,

1 *J. Spencer*

2 and if he asked me to do something, form, get some
3 information to them, he would give me one date,
4 but their expectation was a different date, so I
5 was the one who looked like I was always late.

6 Q. Are there any other ways in which you
7 claim what Mr. Caruso retaliated against you?

8 A. He didn't share any information. I
9 knew nothing that was going on in Business Week,
10 the business that I was supposed to be supporting,
11 strategies, change in organizational charts,
12 staffing changes, down-sizings.

13 I was out of the loop. I was out of
14 the network.

15 Q. Are there any other ways in which you
16 claim he retaliated against you?

17 A. None that I can think of right now.

18 Q. Now, you said a few minutes ago that
19 he started to retaliate against you once you
20 complained about his attitude.

21 When did you complain about his
22 attitude?

23 A. I started complaining about Ken's
24 attitude towards -- in '05, spring of '05 all the
25 way up to September of '05, September, October of

1 *J. Spencer*

2 '05.

3 Q. And to whom did you complain?

4 A. Well, I first complained to him. I
5 brought the matter to his attention, and he
6 continued, he didn't stop.

7 And as I reiterated before, I stopped
8 complaining to him when he told me, when I said
9 minorities are concerned about how they are being
10 treated, and he said to me they should leave, so I
11 stopped complaining to him because I knew he
12 meant, well, you should leave as well, and then it
13 began -- it began to dawn on me that he wanted to
14 get me out, so then I complained to Brett
15 Marschke.

16 Q. When did you complain to Mr. Marschke?

17 A. It had to be between August, maybe
18 September, October.

19 Q. Of '05?

20 A. Of '05.

21 Q. And did you complain to anybody else
22 about Mr. Caruso?

23 A. Well, then I went -- then Sheila
24 O'Neil -- not that she came to me. She didn't
25 come to me. It took her a while to come to me.

1 *J. Spencer*

2 As a matter of fact, she didn't make an
3 appointment to see me.

4 I happened to be talking to her
5 assistant outside her door, and then she came out,
6 and said, oh, I need to speak to you. Brett
7 circled by me.

8 Q. When was that?

9 A. She had done some traveling, it took
10 her a while to get to see me, it took about maybe
11 four weeks, maybe five weeks for her to see me.

12 Q. So when do you claim that you
13 complained to Ms. O'Neil about Mr. Caruso?

14 A. Well, I first complained to Brett.
15 Brett talked to Sheila and then it just happened
16 that Sheila happened to see me, so it was after I
17 spoke to Brett, some time after I spoke to Brett.

18 Q. But you don't know when?

19 A. Not the exact time, no.

20 Q. Did you complain to anybody else about
21 Mr. Caruso?

22 A. Did I complain? I wouldn't say that I
23 complained. I went to lunch with a friend of mine
24 and I said to her, I must be imagining things,
25 something's just not -- something's going on here.

1 *J. Spencer*

2 I only shared information, I didn't
3 complain. I was just so upset.

4 Q. And who was the friend that you went
5 to lunch with?

6 A. Angela King.

7 Q. What's Ms. King's position or what was
8 her position at McGraw-Hill?

9 A. She worked on the corporate side in, I
10 think it's corporate training.

11 Q. Did you complain about Mr. Caruso on
12 more than one occasion to Mr. Marschke?

13 A. I only met Brett on one occasion when
14 we talked.

15 Q. Did you complain about Mr. Caruso to
16 Ms. O'Neil on more than one occasion?

17 A. Yes, I did.

18 Q. How many times?

19 A. Well, she and I met, I guess, about
20 three, four times, but each situation was a
21 different situation.

22 Q. And when you complained to Mr.
23 Marschke, what specifically, what conduct was it
24 of Mr. Caruso that you were complaining about?

25 A. I complained to him about everything

1 *J. Spencer*

2 that Ken had done, his cursing, his treatment of
3 me, his attitude towards me, his demeanor, the
4 work ethic that he had regarding me.

5 That he never said good morning.

6 He made a great, it seemed to me he
7 made a great effort to speak to all white males
8 and white females, when he ignored me.

9 He asked them how they were doing. He
10 never asked me how I was doing. He never said
11 good morning or good afternoon. I would speak to
12 him and I hardly would get a verbal answer.

13 One woman hurt her foot. He stopped
14 to have a whole conversation, oh, how are you
15 doing? Her name was -- her first name is Karen, I
16 don't remember her last name right now -- he went
17 through a whole how are you doing, you have to
18 take care of yourself.

19 He never asked me any of those things.

20 He got very indignant one time when I
21 said, you know, my son is sick, I'm here. I need
22 to at least have some time to just take care of
23 him, and he's, like, upset because I asked for the
24 time.

25 I didn't get any consideration -- I

1 *J. Spencer*

2 got a little bit of consideration after I talked
3 to Brett about the fact that I needed to just look
4 at my son, and I hardly ever do that.

5 Q. You needed to take time off because of
6 your son?

7 A. I needed to be with him, he was ill,
8 he got sick, he got, I think, a virus or the flu.

9 Q. Was there anything else that you
10 complained about with regard to Mr. Caruso to Mr.
11 Marschke?

12 A. Those are the things that I could
13 recall that I complained to Mr. Marschke about.

14 Q. Now, you said that you spoke to Sheila
15 O'Neil three or four times about Mr. Caruso; is
16 that right?

17 A. Yeah. Some of those discussions were
18 on her asking to meet with me.

19 Q. When was the first time?

20 A. The first time I met with Sheila was
21 roughly in about '05, it must have been after I
22 spoke to Mr. Marschke, as I said previously.

23 Q. What specifically did you discuss with
24 Ms. O'Neil at that time?

25 A. I told her exactly what I was going

1 *J. Spencer*

2 through. I told her how he treated me. I told
3 her that I was a nonentity.

4 I wasn't being mentioned. I wasn't
5 being helped.

6 I was given assignments without
7 explanation of how to do it. I wasn't a comp
8 person, but I needed help with comp.

9 He said to me that I could attend
10 compensation training and then on -- when I was
11 supposed to attend he says, oh, we have to do a
12 RIF that day, you can't go -- RIF, a reduction in
13 force.

14 I told him how he ingratiated himself
15 with white males and white females, but that
16 didn't happen to me.

17 I also told him how he asked me to
18 reserve conference rooms, help the temp to reserve
19 conference rooms, because we had a temp at the
20 time and he wanted the room filled.

21 After I had the room filled and had
22 all the confirmations made, he said there was too
23 many people in the room.

24 Then when we didn't have a room, I
25 managed to use my contacts to get a conference

1 *J. Spencer*

2 room and then he complained that the room was too
3 small.

4 When I set up the conference room with
5 materials on the tables and whatever we needed,
6 he'd come in and switch -- like I didn't set up
7 the room appropriately. How when I did training
8 he would cut me off.

9 How when I had one script he would
10 come in with another script, a script as if he was
11 talking to, giving a lecture read to high
12 executive business level people, so when I got to
13 talk with the script that I had that he approved
14 of, it made my presentation pale in comparison to
15 his.

16 That's what I told her also about.

17 Q. This is the PMP training?

18 A. PMP training and anything else he
19 would ask me to do to stand up in front of people.

20 We had coaching for managers in the
21 department heads. He would do the same thing.
22 Anything I did he went out of his way to show
23 dissatisfaction.

24 Q. Did you tell Ms. O'Neil anything else
25 about Mr. Caruso in that first conversation?

1 *J. Spencer*

2 A. I told her about the cursing. I told
3 her how he would use the word "bitches," call
4 women bitches in front of me, how he would say
5 "fuck."

6 I told her how he ordered me out the
7 room. I told her when I was sitting, having a
8 conversation for which he invited me into his
9 office the phone would ring and he'd say leave,
10 but wouldn't, like, please leave or hold on a
11 minute -- he's, like, leave, like, get out.

12 I'd write something for him, I'd write
13 drafts of what I used to use for Mr. Harper, and
14 all of a sudden he wasn't satisfied, but he never
15 gave me any blueprints to work with.

16 If you want me to do something, show
17 me a blueprint. He'd wait till I'd give it to him
18 then he'd mark it up and say he was dissatisfied.
19 I'll do it myself.

20 Q. And you told Ms. O'Neil all of this?

21 A. She knew everything. I told her
22 everything that was to tell.

23 Q. When you say she knew, I'm interested
24 in what you told her.

25 A. What I'm telling you. You asked me

1 *J. Spencer*

2 what I told her; those are the things I told her.

3 Q. Did you tell her anything else during
4 this first conversation with her about Mr. Caruso?

5 A. Nothing that I can recall. If I
6 recall anything, I'll just add it in.

7 Q. Now, you said that you spoke to her a
8 total of three or four times about Mr. Caruso.

9 When was the next time?

10 A. I don't recall exact time, but the
11 next time we talked about Mr. Caruso is the time
12 when she called me and she wanted to, I believe,
13 mediate, and I wasn't willing to mediate with
14 Sheila O'Neil.

15 Q. What do you mean she wanted to
16 mediate?

17 A. She wanted to be a person, to sit,
18 like, in the middle and kind of hear, you know,
19 what he had to say, what I had to say, and kind of
20 -- she could help in getting the situation
21 resolved; to build communication she said.

22 Q. So Ms. O'Neil contacted you and said
23 that she wanted to try to build communications
24 between you and Mr. Caruso and you refused to do
25 that?

1 *J. Spencer*

2 **MR. SOLOTOFF:** Objection. You're
3 mischaracterizing her testimony.

4 **MS. BLOOM:** She's fully capable of
5 telling me if that's what I'm doing.

6 **MR. SOLOTOFF:** That's what you're
7 doing.

8 Q. Ms. Spencer?

9 A. She said to me, I want to build
10 communication. I'd like to meet with you and I'd
11 like to meet with Ken to do my best, in essence,
12 to get the situation, we can -- if we can get the
13 situation resolved -- I can't remember her exact
14 words.

15 Q. And you refused to do that?

16 A. I refused to meet with Sheila O'Neil
17 because she doesn't have a reputation for solving
18 any problems when it comes to minorities.

19 She didn't do it for Marci Brown. She
20 didn't do it for Robin Hicks. She barely did it
21 for Angela King. She didn't do it for Terry
22 Irizarry, a person who worked with her.

23 All she did is when they came to her
24 and told her the problem, she offered them
25 packages.

1 *J. Spencer*

2 A. I don't remember ever going to her and
3 asking her for any help. We didn't have that kind
4 of relationship.

5 Q. Now, when was the next time that you
6 talked to Ms. O'Neil about Mr. Caruso?

7 A. As far as I can recollect, the next
8 time I talked to Sheila O'Neil, because I was very
9 upset, Ken came over and scratched his private
10 areas.

11 Q. When was that?

12 A. I believe that was in between -- I'm
13 trying to think -- maybe '06 -- between '05, '06,
14 I don't remember exact time.

15 Q. What is it that you claim Mr. Caruso
16 did?

17 A. He scratched his private areas and
18 then he denied, he didn't do it. He said he may
19 have tugged at his shirt.

20 Q. Was anyone else present when this
21 happened?

22 A. No one else was present.

23 Q. Where did it happen?

24 A. In my cubicle.

25 Q. When you say in your cubicle --

1 *J. Spencer*

2 A. That's the office space that I'm
3 provided with.

4 Q. Is your cubicle among other cubicles?

5 A. The cubicle is connected, so the
6 person on the other side of me, but it's just
7 high, the cabinets are high cabinets, you don't
8 see them and they don't see you.

9 Q. Now, what, if anything, did Ms. O'Neil
10 say to you when you came to her and you said that
11 Mr. -- you said that Ken Caruso had scratched his
12 private areas?

13 A. She said she would investigate it.
14 She would look into it.

15 Q. And did she do that?

16 A. Yes, she said she did.

17 Q. And how did that get resolved?

18 A. She said that Ken said he didn't do
19 it. He said he might have been -- I don't know
20 her exact words, that he was tugging at his shirt.

21 Q. And what, if anything, else did she
22 say or do with regard to your complaint?

23 A. She just said he said he wasn't doing
24 it. I don't remember anything after that.

25 Q. Were there any other occasions upon

1 *J. Spencer*

2 about it.

3 And that's when I told her, based upon
4 my experience and being a generalist and doing
5 employee relations, that when someone exhibits the
6 attitude and behaviors, they're really told, well,
7 whether you did or you didn't, you need to cease
8 and desist, you need to stop.

9 I never heard those words from her.

10 Q. Well, this time when you say she came
11 to you and asked if he was still cursing, can you
12 tell me when in relationship to the first
13 conversation that you had with Ms. O'Neil where
14 you told her about the cursing, the second
15 conversation took place?

16 A. Can you repeat that one more time.

17 Q. You said that Ms. O'Neil was basically
18 following up with you to see if he had stopped
19 cursing.

20 How soon after --

21 A. It was a long time after the initial
22 conversation.

23 Q. Describe -- when you say a long time,
24 how long?

25 A. Probably a couple of months, months.

1 *J. Spencer*

2 Q. And you told her that he was still
3 cursing?

4 A. He was still cursing.

5 Q. Did he stop cursing at any point in
6 time while you reported to him?

7 A. He stopped cursing -- his cursing
8 continued, but then later on he stopped as I, if I
9 can recall correctly, as I really decided to talk
10 to Sheila about looking for another position, so
11 if I can recall I remember him stopping after I
12 mentioning to her having that conversation with
13 him -- that second conversation with her, that
14 follow-up conversation.

15 Q. I just want to make sure I have the
16 timing right.

17 You talked to Brett Marschke, correct?

18 A. Yes.

19 Q. And then after that Sheila approached
20 you when you were talking to Sheila's assistant?

21 A. Yes.

22 Q. And at that time you told Sheila,
23 among other things, about the cursing?

24 A. I told -- not at that time when she
25 approached me. I want to be correct. There was a

1 *J. Spencer*

2 time that elapsed, and after she came back from
3 her travels, then we had the conversation.

4 Q. And prior to that had you complained
5 to her about Mr. Caruso?

6 A. My first complaint was Brett.

7 Q. So this was the first time that you
8 had spoken to Ms. O'Neil about Mr. Caruso?

9 A. That's correct.

10 Q. And during that first conversation,
11 which was after Ms. O'Neil came back from her
12 travels, one of the things you told her about was
13 Mr. Caruso's cursing?

14 A. I told her whatever I stated,
15 everything that I had to say.

16 Q. And at some point after that, within
17 two months or so --

18 A. Two or three months.

19 Q. -- she followed up with you to see if
20 he had stopped cursing?

21 A. Right.

22 Q. And you told her that he hadn't?

23 A. That he hadn't, and then later on
24 after that he stopped cursing.

25 Q. How long after that did he stop

1 *J. Spencer*

2 cursing?

3 A. Maybe a month or so. I don't quite
4 recall.

5 Q. And was that, did he stop cursing
6 before or after you complained to Ms. O'Neil about
7 Mr. Caruso scratching his private areas?

8 A. I don't recall.

9 Q. Now, you said that you talked to
10 Ms. O'Neil about looking for another position.

11 When was that?

12 A. Somewhere in -- I'm just trying to
13 think -- oh -- between, I believe it was in '06,
14 '05, end of '05, '06.

15 Q. Was it before or after you complained
16 to Ms. O'Neil about Mr. Caruso scratching his
17 private parts?

18 A. It was probably I think around about
19 maybe the same time.

20 Q. Which came first?

21 A. I don't recall.

22 Q. And had he stopped cursing at that
23 point, "he" being Mr. Caruso?

24 A. There was a point in time that he did
25 stop cursing.

1 *J. Spencer*

2 Q. When he would curse, was he cursing at
3 you or just cursing in general?

4 A. He would look directly at me and
5 curse.

6 Q. Well, when you say that he used the
7 word "fuck," did he just say the word "fuck" or
8 did he say something else?

9 A. He could be talking about something
10 and say fuck, like I'm looking at you.

11 Q. He never said fuck you, though; is
12 that right?

13 A. He didn't use the word "fuck you."

14 Q. Did you have any other conversations
15 with Ms. O'Neil about Mr. Caruso, other than the
16 ones that you've described to me today?

17 A. None that I can recall.

18 Q. In your answers to interrogatories,
19 which we previously marked as Spencer Exhibit 5,
20 you identified Ms. O'Neil as one of the people who
21 discriminated and/or retaliated against you.

22 A. Yes.

23 Q. Can you tell me how Ms. O'Neil or how
24 you believe Ms. O'Neil discriminated against you?

25 A. Well, I'm HR, so that means HR can

1 *J. Spencer*

2 education.

3 Q. How many interviews had you had?

4 A. Two.

5 Q. The job at BIG, were there any changes
6 in your compensation?

7 A. No changes in my compensation.

8 Q. Any changes in your grade level?

9 A. No changes in the grade level.

10 Q. Any changes in your benefits?

11 A. No changes in my benefits. Changes in
12 my job responsibilities.

13 Q. Were there any jobs that you applied
14 for during your tenure at McGraw-Hill that you
15 didn't get?

16 A. I didn't apply for any jobs. I loved
17 my position with Business Week. If I was going to
18 grow I wanted to grow into something with Business
19 Week, I wanted to grow into Business Week
20 additional responsibilities, additional things,
21 projects to work on; a change in title perhaps, a
22 change in grade level. You can get that all
23 within the same position that you possess.

24 Q. But there were no jobs that you
25 applied for at McGraw-Hill that you did not get,

1 *J. Spencer*

2 were being treated, he told me they should leave.

3 These minorities should leave.

4 Q. Are those his exact words?

5 A. Yes. And I happened to be a black
6 female and a minority.

7 Q. Are you claiming that he made any
8 other statements to you that were derogatory
9 because of the fact that you're a black female?

10 MR. SOLOTOFF: Other than what she's
11 already testified to?

12 MS. BLOOM: Right. The question was
13 any other.

14 A. Just what I told you.

15 Q. Did you ever hear Mr. Caruso make any
16 type of a racial slur?

17 A. He didn't make racial slurs, but what
18 he said to people of color, Sheila Mitchell who
19 was his assistant had to go see Brett and complain
20 about his attitude slash behavior.

21 Q. Did you ever hear him make a racial
22 slur?

23 A. Not in my -- not immediately in my
24 presence.

25 Q. Are you aware of anybody else ever

1 *J. Spencer*

2 just don't remember her name. She worked in
3 corporate training and she was in with the group
4 of Angela King.

5 Q. During the course of your employment
6 at McGraw-Hill -- you've now told me each of the
7 positions that you held; is that right?

8 A. Senior HR manager was my position at
9 McGraw-Hill.

10 Q. You held that first with
11 responsibility for Business Week and then you held
12 that with responsibility for BIG; is that correct?

13 MR. SOLOTOFF: Objection. Again you
14 mischaracterized her testimony.

15 Q. Ms. Spencer?

16 A. I held senior HR manager's position
17 supporting information services and media, which
18 included at one time Platts, Aviation Week and
19 Health Care.

20 Q. During your tenure at McGraw-Hill did
21 you also deal with employee relations issues
22 involving white employees?

23 A. I handled both whites and I handled
24 employee relations issues whites, males and
25 females, Hispanics and blacks and other

1 *J. Spencer*

2 nationalities that fall under the category of
3 Caucasian.

4 Q. And with regard to any of the whites
5 or other nationalities that fall under the
6 category of Caucasian, were you ever involved in
7 the termination of any of those people?

8 A. Through reductions in force. When
9 they were asked to leave due to poor performance,
10 or attendance issues.

11 Q. When you say that Mr. Caruso reduced
12 your job responsibilities, can you tell me
13 specifically what responsibilities you had that
14 you claim he took away from you?

15 A. Well, I was responsible for all the
16 employee relations issues. They came to a
17 reduction in the sense of the level.

18 I no longer met with department heads.

19 I no longer met with managers.

20 I had no visibility at the department
21 head meetings.

22 He claimed that my involvement was
23 diversity, I wasn't sourcing the correct -- the
24 candidates that were suitable for Business Week.

25 So diversity efforts began to peter

1 *J. Spencer*

2 out.

3 I used to work with inroads -- could
4 have been involved with inroads, despite someone
5 else taking it over, I believe on the corporate
6 side or in the training department.

7 Q. Someone else took over that
8 responsibility?

9 A. Well, someone else headed it up, but
10 should Business Week had wanted to get an intern,
11 then I would -- I would have been the person
12 instrumental in helping that transpire, and when I
13 talked to him about the possibility of exploring
14 that, he told me they don't need an intern, they
15 are not interested.

16 Q. Did you hire an intern that year?

17 A. When I was working for Ken we didn't
18 work on inroads. He thought that that's something
19 I should not be doing.

20 Q. Are there any other -- I'm sorry --

21 A. I didn't conduct presentations. HR --
22 I didn't conduct HR presentations to the -- to the
23 president and his department heads. That ceased.

24 In other words, I would give them
25 updates on how we were supporting their -- HR was

1 *J. Spencer*

2 linked to the business and how we were supporting
3 some of their efforts.

4 I no longer was involved in going to
5 the individual department head meetings.

6 I would level jobs -- one of the
7 things I forgot to mention I would level jobs or
8 write position descriptions based upon the
9 manager's request. He would ask me to go to my
10 files, pull out the copies and go behind closed
11 doors and start revising the descriptions and
12 sending them to them.

13 Q. Anything else, any other job duties
14 that you had that he took away from you or you
15 claim he took away from you?

16 A. I used to be on -- there were
17 committees that you could join based upon your
18 manager's recommendation, but I wasn't recommended
19 for any committee. The only committee is when we
20 were doing a video for a new PMP system and then
21 when I went to him and said I'd like to be part of
22 the presentation, because I did sit in with the
23 writers, he chose to stand up in front of the
24 group and present and never even recognized me.
25 Just said thanks to Jesan Spencer and that was

1 *J. Spencer*

2 about it.

3 Q. Were there any other job duties that
4 you claim you had that he took away from you, "he"
5 being Mr. Caruso?

6 A. Mr. Caruso took away interface. My
7 job was interface with the business units. I
8 didn't have that. That's where my work came from.
9 Employee relations. He did that. I spoke to, I
10 believe the man's name was Howard Mannes, and I
11 said, Howard, for example, Ken Caruso sent me to
12 talk about this employee.

13 He says, I've already spoken to Ken
14 about this.

15 Q. So is it your testimony that
16 Mr. Caruso actually assumed the duties that you
17 used to do?

18 MR. SOLOTOFF: Objection. She didn't
19 say that.

20 A. Mr. Caruso took away my
21 responsibilities. What he did with them was
22 between him and his people. I can't say what he
23 assumed and what he did. I wasn't involved in any
24 of the work where at the end of the year you look
25 at the salary and make sure they fit into a

1

J. Spencer

2 every opportunity I could to hear about how -- to
3 listen to how he communicated to white males and
4 white females, and the conversations were so
5 completely different.

6 Even the terms of how he talked to
7 Sheila Mitchell.

8 Q. Did he ever actually call you a bitch?

9 A. Well, he might as well. You say bitch
10 to a person and there's no one else in the room,
11 who else are you talking about?

12 Q. When he used the word "bitches," give
13 me a context, an example of how he used it.

14 A. Those bitches.

15 Q. And to whom was he referring?

16 A. To other women, because he called
17 women bitches.

18 Q. Which women?

19 A. Well, he didn't give me the names.

20 MS. BLOOM: This would be a good time
21 to break for lunch. Thank you very much.
22 Come back in an hour. It's about five of 1
23 right now.

24 (Luncheon recess taken at 12:57 p.m.)

25

1 *J. Spencer*

2 reduction in force.

3 Q. With regard to the business that you
4 currently own, can you tell me when you first
5 registered that business?

6 A. When I registered the business?

7 Q. Yes.

8 A. I don't even remember. I'm trying to
9 think -- I don't remember.

10 Q. Were you still working at McGraw-Hill
11 at the time?

12 A. I don't remember because there was so
13 much paperwork involved when I decided to do a
14 business, that I really don't recall.

15 Q. Did it take a while to complete the
16 paperwork?

17 A. No. It doesn't take a long time, no.
18 You mean the paperwork to register the business?

19 Q. Well, you just said there was so much
20 paperwork involved, I'm trying to understand how
21 long it took.

22 A. There was a lot of pieces that get
23 connected.

24 Q. Sitting here today, you can't remember
25 when it was that you registered the business?

1 *J. Spencer*

2 A. No.

3 Q. Do you have any documents that would
4 refresh your recollection?

5 A. Not with me.

6 Q. You have some at home?

7 A. I might have them where the store is.
8 I might have them in storage.

9 Q. What would those documents be?

10 A. I don't understand your question.

11 Q. Well, if I wanted to obtain copies of
12 the documents that would help refresh your
13 recollection as to when you registered your
14 business, tell me what documents I would ask for.

15 A. Oh, the one that you're asking for,
16 the date, whatever I did the paperwork to register
17 my business. Registering your business isn't the
18 time when you start a business.

19 Q. How long -- you said registering your
20 business isn't the time when you start the
21 business.

22 When did you actually start the
23 business?

24 A. I didn't start my business until
25 March.

1 *J. Spencer*

2 The only people they send to Lincoln
3 are the army and military to try to induce you to
4 go to -- to get military training, because that's
5 what they think over at Lincoln. And he realized
6 when he went there that was something that he
7 didn't look forward to. He didn't think about it.

8 Q. Is he still at Lincoln today?

9 A. He still goes to Lincoln.

10 Q. How much time did you take off of work
11 in that last year?

12 A. How much time? You mean the time that
13 I requested off?

14 Q. Yes.

15 A. We scheduled it so I only came in I
16 think three days a week. I spent two days at
17 home, three days at work, but also during that
18 time I did a little bit of work from home when
19 necessary.

20 Q. In addition to the reduced work
21 schedule that you just described, you also took
22 off or requested time off to deal with issues
23 pertaining to your son?

24 A. When was -- what time are you talking
25 about?

1 *J. Spencer*

2 Q. During your last year at McGraw-Hill.

3 A. I requested time off, yes, but I'm not
4 clear whether you're telling me that I requested
5 more than one, let's call it, leave.

6 Q. How much time off did you request in
7 your last year at McGraw-Hill?

8 A. I don't recall.

9 Q. And the time that you requested off
10 was time off to address the issues with your son;
11 is that right?

12 A. Time off to address the issues with my
13 son, time off also to address some issues with my
14 mom, which I didn't bring to anybody's attention.

15 Q. What were those issues with your mom?

16 A. My mom is 90 years old and she works,
17 and she needed some help with her housing
18 situation.

19 Q. What's your mom's name?

20 A. Lola.

21 Q. Lola what?

22 A. Spencer.

23 Q. What was the help she needed with her
24 housing?

25 A. Well, her apartment, the man had not

1 *J. Spencer*

2 Q. What did you do when you got to BIG?

3 A. I met with Toi Eaton.

4 Q. What were your job responsibilities?

5 A. She told me I was going to be -- she
6 wanted me to work on some recruiting issues with
7 the recruiting department. Then there was this
8 group, I don't remember what the group did, but
9 there was this group that dealt with, I believe,
10 some part of outsourcing.

11 I would be meeting with them and
12 meeting with the directors, but I never did
13 because she met with the directors.

14 She wanted me to, since she asked me
15 to bring over any job descriptions that related to
16 Aviation Week because then they would have them,
17 design other jobs for, so she wanted me to design
18 job descriptions.

19 She asked me to do some PMP training.

20 Q. What was your job title?

21 A. Senior manager of human resources for
22 BIG.

23 Q. How long did you stay at BIG?

24 A. I went to BIG between on or about May
25 or June, end of May, beginning of June, and I left

1 *J. Spencer*

2 in February of 2007, so I started in 2007 and
3 ended in 2007.

4 Q. You started in May or June of 2006 and
5 ended in February of 2007?

6 A. Right, 2006.

7 Q. So about half a year you were there?

8 A. Wait, let me just think. Yes, 2000 --
9 that's correct.

10 Q. During that half a year what job
11 duties did you actually perform?

12 A. I did some research for recruiting
13 group which was -- and gave them a list of
14 organizations to source, candidates for positions
15 in Aviation Week.

16 I, since I didn't have access to
17 Lawson, no one could provide it for me, and I had
18 that at all times, I had to go to Bill's
19 administrative assistant and ask her to look up
20 salaries and titles and levels in order to level
21 jobs that were given me to level.

22 And I also had to spend time getting
23 approval or position numbers for the jobs that
24 were being recruited for.

25 In total, the number PMP sessions I

1 *J. Spencer*

2 conducted probably were about five or six.

3 Then I spent my time doing drafts of
4 position requests that had to be billed and maybe
5 once in a while I'd get an employee relations
6 issue from one of the directors, who indicated
7 that an employee was going to leave -- was going
8 to be AWOL from the military, when in essence that
9 department had called the military and told them
10 that she was going to be AWOL.

11 And I reserved some conference rooms.

12 There wasn't very much that I did.

13 Some training.

14 Q. What kind of training?

15 A. PMP training, just overviews; nothing
16 in depth.

17 Q. Now, during the six months or so that
18 you were at BIG, for how much of that time were
19 you on a reduced schedule?

20 A. If I recall correctly, I probably was
21 only on a reduced schedule maybe about, maybe a
22 month.

23 Q. And at what point during your
24 employment at BIG was that one month?

25 A. I don't recall.

1 *J. Spencer*

2 document that's been marked as Spencer Exhibit 8,
3 and I've simultaneously provided a copy of that
4 document to your counsel.

5 Do you recognize this as a copy of
6 your review for 2001?

7 (Witness reviews document.)

8 A. This is a copy of the performance
9 appraisal for the period of January through the
10 end of the year of 2001.

11 Q. And, Ms. Spencer, is that your
12 signature on the last page of this document?

13 A. That's my signature on the last page
14 of the document.

15 Q. And you didn't write anything under
16 the section that says employee comments; is that
17 right?

18 A. There is nothing written under that
19 section.

20 Q. What was the rating that you received
21 for 2001?

22 A. Performance exceeds expectations.

23 Q. Were you satisfied with this review?

24 A. I was satisfied.

25 Q. Do you think the review was fair?

1 **J. Spencer**

2 (Witness reviews document.)

3 A. I recall this review for the period
4 2002.

5 Q. Ms. Spencer, did you sign this review?

6 A. This review was signed by me.

7 Q. And it's a review that you were given
8 by Mr. Harper; is that correct?

9 A. Yes. This review was conducted by
10 Bill Harper.

11 Q. And you wrote no comments under the
12 employee comment section; is that right?

13 A. No comments written.

14 Q. And the rating that you received for
15 this year was what?

16 A. Performance exceeds expectation was
17 the rating received.

18 Q. Were you satisfied with that rating?

19 A. I was comfortable with that rating.

20 Q. Did you think it was fair?

21 A. I thought it was a rating that I
22 deserved.

23 (Spencer Exhibit 10, 2003 Management
24 Performance Appraisal and Development
25 Planning Worksheet, marked for

1 *J. Spencer*

2 A. I recognize this appraisal for 2005.

3 Q. This was a review that you were given
4 by Mr. Caruso; is that right?

5 A. Mr. Caruso gave me this review.

6 Q. And he rated your overall performance
7 as target achievement, correct?

8 A. Yes, he did.

9 Q. Were you satisfied with that rating?

10 A. I was satisfied with the rating, but
11 not his comments.

12 Q. What specifically was it about his
13 comments was it that you weren't satisfied with?

14 A. It's in the area of the competencies
15 and overall performance summary. Those are the
16 areas in which he made comments that I was not
17 satisfied with.

18 Q. Which specific comments were you not
19 satisfied with?

20 A. On 2005, on the 2005 talent management
21 Jesan was successful in identifying diverse
22 candidates of a consistency high caliber; however,
23 in speaking about the individual whom she referred
24 to Business Week sales, as one case in point, the
25 candidate was clearly too senior for any present

1 *J. Spencer*

2 **THE WITNESS:** Repeat the question,
3 please.

4 (Record read.)

5 A. To my knowledge, he wasn't responsible
6 for anything related to my diversity slate because
7 he had divorced himself from it.

8 Q. Do you know Malin Sellis?

9 A. Malin? Do you have the spelling of
10 the first name?

11 Q. Last name is Sellis, S E L L I S.

12 A. She is a temp that worked for us.

13 Q. What was her race?

14 A. I don't know what her race was, but
15 she -- I don't know what her race was. I didn't
16 ask her.

17 Q. She wasn't African American, though,
18 was she?

19 A. Visually, I don't think so, but you
20 can't judge a person by their color.

21 Q. Do you know whether she ever
22 complained about Mr. Caruso cursing?

23 A. Complained to whom?

24 Q. To anybody at McGraw-Hill.

25 A. Oh, she told Sheila and I about it all

1 *J. Spencer*

2 the time. Sheila complained about Caruso cursing.

3 Q. So presumably Mr. Caruso cursed in
4 front of Ms. Sellis as well?

5 A. She heard it. She didn't know who he
6 was talking to at the time. When she did complain
7 about it she knew he was talking to me, because I
8 was in there more than she was.

9 Q. But she heard him curse?

10 A. She heard him curse. She even said to
11 me, Jesan, how do you take it?

12 Q. And do you know if he cursed in front
13 of her?

14 A. I have no idea.

15 Q. I'd like to go back to Exhibit 5, your
16 answers to interrogatories, please.

17 If you look at interrogatory No. 10
18 and your answer to that interrogatory, this is the
19 one that identifies Patricia Kuusisto.

20 Can you tell me what other doctors
21 you've been to see besides her from December 1997
22 to the present?

23 A. None.

24 Q. None?

25 A. No doctors.

1 *J. Spencer*

2 Q. Well, have you been on any job
3 interviews?

4 A. I haven't been on any job interviews.

5 Q. What made you start your own business?

6 A. Because I had to work. I had nothing
7 to do. Everything I had was taken away from me.
8 I didn't know where to begin.

9 Q. Nobody at McGraw-Hill asked you to
10 leave; isn't that right?

11 A. While I was where? At --

12 Q. The last job that you held at
13 McGraw-Hill was at BIG; is that correct?

14 A. Correct.

15 Q. And nobody told you that they wanted
16 you to leave the company, did they?

17 A. They didn't have to ask me to leave.
18 The way I was treated was enough. They gave me no
19 job, nothing to do, twiddling my thumbs, walking
20 out, taking walks around the block and walks
21 around the block.

22 That's enough to tell you to leave.
23 They don't have to say so. All they do is have to
24 say put her in Siberia in the back, give her
25 nothing to do. She'll leave. Because, you know

1 *J. Spencer*

2 what, people who get those kind of assignments,
3 they leave.

4 Q. No one asked you to leave, did they?

5 A. That was leaving to me.

6 Q. Well, it was a decision that you made
7 that you didn't like your job?

8 A. Fostered by their behavior and how
9 they treated me, so they forced me out.

10 Q. Was there anybody, once you got to
11 BIG, that forced you out?

12 A. The behaviors forced me out. The
13 attitudes forced me out. The lack of work forced
14 me out. You don't have to verbally tell somebody
15 that they need to leave. You can physically take
16 everything away from them and then you know that
17 you see the handwriting on the wall.

18 And then they do the appraisal, well,
19 you haven't done this, and you haven't done that,
20 but they haven't given it to you. That's how
21 McGraw-Hill operates. They did the same thing to
22 -- Jeff Dodge did the same thing to Roberta
23 Ransou. He took way all her responsibilities and
24 then at the end said, oh, by the way, you haven't
25 been doing your job, why don't you take a package

1 *J. Spencer*

2 and leave. That's how it goes.

3 Q. Did anybody offer you a package in
4 connection with your departure?

5 A. I don't recall being offered a
6 package.

7 Q. Did anyone ask you to leave?

8 A. As I stated before, they don't have to
9 ask you to leave. It's a nonverbal get out.

10 Q. Who did you tell you were resigning?

11 A. I told Sheila O'Neil I was leaving.

12 Q. Did you tell her in person or in a
13 writing?

14 A. I told her in person.

15 Q. What did you tell her was the reason
16 why you were leaving?

17 A. I told her how I, the -- that the work
18 assignment that she indicated was a grade level
19 19, which is a senior manager of human resources,
20 was not. I said what it was was more like a
21 clerical job.

22 Q. What did she say to you?

23 A. She says, Jesan, I'll go over there
24 and I'll talk to Bill and I'll fix it.

25 She couldn't fix it and I told her she

1 *J. Spencer*

2 couldn't fix it. I told her it is too little too
3 late.

4 Q. So she offered to go and to talk to
5 Bill Harper and to fix your situation?

6 A. She couldn't fix it. Any time a VP
7 goes over to speak to someone like a Bill Harper
8 or anybody, your director, they're going to view
9 that as a complaint, they're going to make your
10 life holy hell. I happen to know that.

11 You can't go to somebody on top and
12 talk about your boss, about what Toi Eaton didn't
13 do, because they are going to give you -- you are
14 going to have a horrible time. The
15 handwriting was on -- the die had been cast.
16 There's nothing Sheila O'Neil could do. She
17 couldn't salvage Robin Hicks. They complained to
18 her. She tried to fix that. She couldn't
19 salvage -- she could not salvage any situation
20 where black people came to her and said I'm having
21 this issue.

22 Q. Regardless of --

23 A. She couldn't even fix Angela King's
24 situation.

25 Q. When you went to Ms. O'Neil she did

1 *J. Spencer*

2 offer to try to fix it, but you declined?

3 A. That --

4 **MR. SOLOTOFF:** Excuse me. Asked,
5 answered; asked, answered; asked and
6 answered. One more time and I will instruct
7 her not to answer.

8 Q. Ms. Spencer --

9 **MR. SOLOTOFF:** Can you please read
10 back the last sets of questions and --

11 **MS. BLOOM:** No, we're not going to do
12 that. There is a pending question that I'd
13 like an answer to. If you're going to
14 direct her not to answer, go ahead and just
15 direct her not to answer and we can take --

16 **MR. SOLOTOFF:** You're harassing this
17 witness because she's answered it. It's
18 been asked and answered, counsel.

19 **MS. BLOOM:** Your choices are let her
20 answer the question or direct her not to
21 answer, and if you direct her not to answer
22 I'm very happy to go over this with the
23 magistrate on Monday.

24 **MR. SOLOTOFF:** Objection. Note my
25 objection. It's already been asked and

1 *J. Spencer*

2 that I have and the whole list of jobs that I had
3 leveled since I had been with the McGraw-Hill
4 Companies that I shipped over and I put them in
5 order, so if anyone wanted to look at them they
6 were categorized by grade level, they were
7 categorized by title, and that took a while to do.

8 I didn't want anyone to say that I
9 left and I left work behind for them to do.

10 Q. How long did it take you, or to finish
11 up all the work that you were doing?

12 A. Well, I was there for full days. It
13 wasn't like half day here and half day here. I
14 worked like I normally would do, what was expected
15 of me.

16 Q. And you devoted all your time to
17 finishing things up?

18 A. I devoted my time to finishing things
19 up. There wasn't anything else for me to do.
20 There was no work.

21 Q. Did you submit a formal resignation
22 letter?

23 A. I did not submit a formal resignation
24 letter.

25 Q. Had you made a decision to open your

1 *J. Spencer*

2 own business at the time that you left
3 McGraw-Hill?

4 A. All my life I made a decision to open
5 my own business. They talk about that in
6 McGraw-Hill, people opening their own business. I
7 mean, that's a goal, that was a wonderful goal to
8 try to accomplish.

9 Q. So opening your own business was a
10 goal of yours for your entire life?

11 A. Well, it's something that I thought
12 about, I entertained. My grandmother owned her
13 own business.

14 Q. Are you enjoying owning your own
15 business?

16 A. I don't know. I haven't thought about
17 it yet. I'm too busy dealing with this.

18 Q. When you say "too busy dealing with
19 this," what are you talking about?

20 A. Well, I'm here, this is where my time
21 is today. It's not in my business.

22 Q. Other than the time that you spent
23 here today, how much time have you spent dealing
24 with this lawsuit?

25 A. I think about it. I realized I had a

1 *J. Spencer*

2 had you already registered your business?

3 A. You asked me that question before and
4 I said I think I did. I don't remember because
5 there was a paper -- I said there was paperwork
6 involved.

7 Q. Had you taken any steps towards
8 registering it?

9 A. After I left McGraw-Hill?

10 Q. Before you left McGraw-Hill.

11 A. There was a lot of things I thought
12 about way into going to McGraw-Hill regarding my
13 business.

14 Q. Had you taken any steps towards
15 registering your business before you left
16 McGraw-Hill?

17 A. I probably did take steps to register
18 the business, but it wasn't my business at the
19 time.

20 Q. Was it a business that you bought from
21 somebody else?

22 A. I bought it from someone else.

23 Q. When did you buy it?

24 A. Well, I officially bought it in March
25 of '07.

1 *J. Spencer*

2 Q. How long had you been negotiating?

3 A. Oh, this negotiation took a long time
4 and I didn't have to be there as the owner. I
5 could have been an absentee owner.

6 Q. When did you actually reach a deal
7 with the prior owner?

8 A. I didn't have a deal with the prior
9 owner. The prior owner's philosophy was
10 everything's lined up, all the I's are dotted and
11 your lawyer comes to the closing, hands me a
12 check, we have a deal.

13 Q. So you had a lawyer in connection with
14 the purchase?

15 A. I had to get a lawyer.

16 Q. Who is the lawyer?

17 A. Alan Katz.

18 Q. Where is he located?

19 A. In White Plains.

20 Q. Did you assume an existing lease for
21 the business or did you get a different lease?

22 A. I don't recall.

23 Q. Was the business in the same location
24 that it's in now?

25 A. It is.

1 *J. Spencer*

2 Q. What is the name of the business?

3 A. Healthy Life.

4 Q. Who was the prior owner?

5 A. Maria.

6 Q. What was Maria's last name?

7 A. Velez, Maria Velez.

8 Q. So there was an actual closing for the
9 sale of the business?

10 A. There had to be.

11 Q. You think that was some time in March
12 of '07?

13 A. It was in March.

14 Q. Do you know Rene Dubose?

15 A. Rene Dubose --

16 Q. Dubose.

17 A. I know of Rene Dubose, yes.

18 Q. Did you and Ms. Dubose have lunch
19 together in December of 2005 at or about the time
20 that you complained to Mr. Marschke about
21 Mr. Caruso?

22 A. Ms. Dubose and I had lunch often.

23 Q. Was that because you were friends?

24 A. She made my acquaintance when she
25 first came to McGraw-Hill.